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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057280
Party	Defendant Meenaxi Enterprise, Inc. DBA Meenaxi Enterprise, Inc.
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Date	08/13/2013
Attachments	Answer.pdf(383172 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CADBURY UK LIMITED,

*Petitioner,*

v.

MEENAXI ENTERPRISE, INC.,

*Registrant.*

Cancellation No.: 92057280

Reg. No.: 4,206,026

**ANSWER TO PETITION FOR CANCELLATION**

Registrant Meenaxi Enterprise, Inc. ("Registrant"), by and through its undersigned attorneys, hereby answers the Petition for Cancellation in the above-identified proceeding. Registrant's responses to, and allegations against, Petitioner Cadbury UK Limited ("Petitioner"), are based upon actual knowledge of its own actions and information and belief with respect to all other matters.

Registrant denies the introductory allegations that the continued registration of the mark BOURNVITA as shown in registration No. 4,206,026 will damage Petitioner.

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Petition for Cancellation, and therefore denies them.

2. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Petition for Cancellation, and therefore denies them.

3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 of the Petition for Cancellation, and therefore denies them.

4. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Petition for Cancellation, and therefore denies them.

5. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Petition for Cancellation, and therefore denies them.

6. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 of the Petition for Cancellation, and therefore denies them.

7. Admitted.

8. Registrant admits that it imports various products from overseas and sells them to consumers in the United States. Registrant denies the rest of the allegations in Paragraph 8 of the Petition for Cancellation.

9. Registrant admits that it does not have an agreement with Petitioner, but denies that such an agreement is necessary to operate its business, use the BOURNVITA mark or claim ownership of the mark. Registrant denies the rest of the allegations in Paragraph 9 of the Petition for Cancellation.

10. Paragraph 10 of the Petition for Cancellation calls for a legal conclusion and is therefore denied.

11. Registrant admits that it has never received any authorization from Petitioner, but denies that any such authorization is necessary to operate its business, use the BOURNVITA mark or claim ownership of the mark. Registrant denies the rest of the allegations in Paragraph 11 of the Petition for Cancellation.

12. Admitted.

13. Registrant admits that the application that matured into the Registration was application Serial No. 85/540,380 ("Application"), and that in the Application, Registrant claimed a first use in commerce date of January 1, 2008. Registrant denies the rest of the allegations in Paragraph 13 of the Petition for Cancellation.

14. Denied.

15. Registrant admits that it does not have an agreement with Petitioner, but denies that such an agreement is necessary to operate its business, use the BOURNVITA mark or claim ownership of the mark. Registrant denies the rest of the allegations in Paragraph 15 of the Petition for Cancellation.

16. Admitted.

17. Denied.

18. Denied.

19. Registrant repeats its responses set forth in Paragraphs 1-18 above as if fully set forth herein.

20. Denied.

21. Denied.

22. Admitted.

23. Admitted; however, Registrant denies that such consent is required.

24. Admitted, however, Registrant denies that such agreement or acknowledgement from Petitioner is required.

25. Admitted, however, Registrant denies that such assignment of rights by Petitioner in any jurisdiction is required.

26. Denied.

27. Registrant repeats its responses set forth in Paragraphs 1-26 above as if fully set forth herein.

28. Denied.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

### **DEFENSES**

1. Registrant's rights in its BOURNVITA mark are superior to Petitioner's rights in its alleged BOURNVITA mark.

2. Petitioner does not own any assertable common law rights in its alleged BOURNVITA mark.

3. Petitioner has not distributed any products in the United States in connection with its alleged BOURNVITA mark.

4. Petitioner's products are not properly labeled for sale in the United States.
5. To the extent that any of Petitioner's products were distributed by third-parties in the United States, such distribution was without Petitioner's authorization and does not inure to the benefit of Petitioner. Indeed, distribution of such products may violate product labeling requirements in the United States.
6. Petitioner is not the correct party in interest in this matter.
7. Petitioner lacks standing.
8. The Petition for Cancellation fails to state a claim upon which relief can be granted.
9. Petitioner is barred from any relief under the doctrine of estoppel.
10. Petitioner is barred from any relief under the doctrine of acquiescence.
11. Petitioner is barred from any relief under the doctrine of waiver.
12. Petitioner is barred from any relief under the doctrine of unclean hands.
13. Petitioner is barred from any relief under the doctrine of laches.
14. Registrant has used its BOURNVITA mark prior to Petitioner's first use of its alleged BOURNVITA mark.

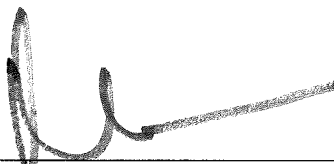
Any allegation not specifically addressed herein is denied.

WHEREFORE, Registrant respectfully requests that the Petition for Cancellation be dismissed.

Dated: August 13, 2013

Respectfully submitted,

KENYON & KENYON LLP

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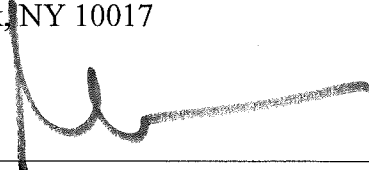
Fax: (212) 425-5288

Attorneys for Registrant  
Meenaxi Enterprise, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **ANSWER TO PETITION FOR CANCELLATION** was sent this 13th day of August, 2013 by first class mail, postage prepaid, to counsel of record for Petitioner:

Barbara Solomon  
FROSS ZELNICK LEHRMAN & ZISSU, P.C.  
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New York, NY 10017



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M. Kelly